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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1938**

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# No. 517

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GERRIT W. CLASON, *Appellant,*

*vs.*

STATE OF INDIANA, *Appellee,*

---

APPEAL FROM THE SUPREME COURT OF INDIANA.

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## STATEMENT AS TO JURISDICTION.

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This statement, showing this Court has jurisdiction to review the judgment appealed from, is submitted pursuant to its Rule 12 (1).

### Statute Sustaining Jurisdiction.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States over this appeal is Section 237 (a) of the Judicial Code, as amended, which, in its relevant parts, reads:

> "(a) A final judgment or decree in any suit in the highest court of a state in which a decision in the suit

> could be had * * * where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * *" (Act of Congress, February 13, 1925, ch. 229, sec. 1; 43 Stat. 937; 28 U. S. Code 344a.)

Appeal has now been substituted for the remedy of writ of error under said statute: Act of Congress, January 31, 1928, ch. 14, Secs. 1 and 2; 45 Stat. 54, as amended April 26, 1928, ch. 440, 45 Stat. 466; 28 U. S. Code, 344a; 861a, and 861b.

**The Judgment Sought to be Reviewed.**

The judgment of the Supreme Court of Indiana, here sought to be reviewed, reads:

> "The judgment of the Elkhart Circuit Court is affirmed."

This judgment is found at the end of the opinion of the Supreme Court of Indiana, which is the Appendix to this statement. It is also found in the Record at page 45; and the opinion, though not yet officially reported, is found in 17 N. E. 2nd 92. Such judgment was rendered November 1, 1938.

**Finality of Such Judgment.**

Under established Indiana practice, the judgment in an appealed case consists of the order made at the close of the deciding opinion. The clerk makes a minute of such decision and order, which is signed by the Chief Justice, and no other or separate judgment is entered. The judgment so made when the case is decided stands for sixty days, and then becomes final, unless a petition for rehearing has been filed. If a petition for rehearing is filed, the judgment of the court becomes final when the rehearing is denied.

The Constitution of Indiana (Article 7, Section 5) provides:

> "The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon."

The Supreme Court of Indiana by rule prescribes the practice and procedure before it, under the authority of Chapter 91 of the Acts of the 80th Session (1937) of the General Assembly; and by Rule 23 of said court, it is provided that:

> "Application for a rehearing of any cause shall be made by petition, separate from the briefs, signed by counsel, filed with the clerk within twenty days from its rendition of the decision, stating concisely the reasons why the decision is thought to be erroneous, which application shall be supported by briefs, with argument set out therein, if desired. * * *"

The decision in this case was rendered on November 1, 1938. Petition for rehearing was filed on November 19, 1938. Rehearing was denied on November 29, 1938 (R. 58).

The date of the final judgment, from which this appeal is taken, is November 29, 1938; and time for appealing to this Court runs from the date of denial of rehearing: *Citizens Bank of Michigan City, Indiana*, v. *Opperman*, 249 U. S. 448, 449.

The judgment is final in that it affirms a final judgment of the trial court, completely determines the controversy, and leaves nothing to be done except the ministerial act of enforcement of the judgment. The judgment appealed from is final, within the meaning of Section 237a of the Judicial Code as amended February 13, 1925.

**Timely Application for Appeal.**

Rehearing was denied November 29, 1938.

The petition for appeal, accompanied by assignments of

error, prayer for reversal, and this statement as to jurisdiction, as required by Rule 12(1) of this Court, was presented on November 30, 1938, to the Chief Justice of the Supreme Court of Indiana and by him allowed on November 30, 1938.

Thus the application for appeal was made within three months after entry of final judgment as provided in the Act of February 13, 1925, ch. 229, Sec. 8(a); 43 Stat. 940; 28 U. S. Code 350.

**This Appeal is from the Highest State Court.**

The Supreme Court of Indiana is the court of last resort in the State of Indiana, under its Constitution.

> Constitution of Indiana, Article 7, Section 1;
> *Ex parte France*, 176 Ind. 72, 80-81;
> *Curless* v. *Watson*, 180 Ind. 86, 92, 93.

**Nature of the Case—Substantial Federal Questions Were Necessarily Decided.**

This case is a prosecution by affidavit for unlawful hauling and transporting over a State highway of the State of Indiana into the State of Illinois of the body of a large dead animal not intended for human food, by appellant who did not, and, for interstate commerce could not, hold a license for such transportation under Chapter 278 of the Indiana Acts of 1937, known as the Dead Animal Disposal Act.

The statute in question, Chapter 278 of the Indiana Acts of 1937 (Burns Ann. Ind. Stat. 1933, Secs. 16-817 to 16-837, pocket supplement) (a copy is included in the appendix hereto) is entitled:

> "An Act to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect."

The first section of the Act declares it to be the public policy of the State of Indiana:

> "to control and regulate the transportation over the highways of this State and the disposal of the carcasses of dead animals not slaughtered and intended for human food. * * *"

A person licensed under the Act is permitted to transport such carcasses to disposal plants located in Indiana, but interstate commerce in such carcasses is prohibited. Specifically, Section 11-a of the Act provides:

> "No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business."

The trial court first sustained a motion to quash; and on appeal by the State, a reversal was had, the affidavit was sustained and the cause remanded to the trial court: 12 N. E. 2nd 750; 13 N. E. 2nd 307. (Copies are included in the appendix hereto.)

Appellant then moved to quash the affidavit in the trial court upon the following grounds:

> "1. The facts stated in the affidavit do not charge and constitute a public offense.
>
> 2. The affidavit contains matter which, if true, constitutes a legal justification of the offense charged.
>
> 3. Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, upon which said affidavit is based, is not valid as a regulation but is invalid as in violation of Article I, Section 8, Clause 3, of the Consti-

tution of the United States as a prohibition of interstate commerce and yet a sanction of intrastate commerce in legitimate articles of commerce, viz., the bodies of large dead animals not slaughtered for human food.

4. Chapter 278 of the Acts of 1937 General Assembly of the State of Indiana is invalid as violative of Article I, Section 8, Clause 3, of the Constitution of the United States, the protection of which defendant invokes, as permitting the transportation and sale in intrastate commerce of bodies of large dead animals not slaughtered for human food as legitimate articles of commerce, while prohibiting all transportation and sale of such articles in interstate commerce."

Said motion was overruled, with an exception (R. 6).

After a trial, at which it was stipulated that:

"Under the provisions of Chapter 278 of the Acts of the 1937 General Assembly of the State of Indiana, said Gerrit W. Clason could not have obtained a permit or license to haul or transport the body of any large dead animal, not slaughtered and intended for human food, over any public highway of or in the State of Indiana into the State of Illinois or any other State, for sale or reduction there" (R. 36).

appellant was found guilty as charged, and the trial court found that he should be fined (R. 21).

Appellant then filed a motion in arrest of judgment, reiterating the grounds of his last motion to quash (R. 21) but said motion in arrest was overruled, with exception (R. 22).

After a motion for a new trial was filed and overruled, the trial court rendered judgment as follows:

"It is therefore considered, ordered, and decreed by the Court that the defendant, Gerrit W. Clason, for the offense so by him committed, do make his fine to the State of Indiana in the penal sum of Twenty-five

($25.00) Dollars, and that he pay and satisfy the costs and charges herein taxed at —— Dollars and — Cents" (R. 23).

An appeal was then taken to the Supreme Court of Indiana, and the errors assigned were the overruling of each of said motions (R. 1). Under Indiana practice, the specific legal points relied upon are presented in appellant's brief under the head of "Propositions and Authorities". Appellant, arguing in its brief in said court that—

> "The single question of law presented by the appeal is this: Is Chapter 278 of Acts 1937 invalid to the extent it is a prohibition and not a regulation of interstate commerce in legitimate articles of commerce in which intrastate commerce is sanctioned by the same Act; contrary to Article 1, Section 8, Clause 3, of the Constitution of the United States?"

presented as its Propositions I, II, III, IV and V the following:

> "I. The gist of the offense charged is the transportation in interstate commerce of the carcass of a dead animal not intended for human food; in violation of the Dead Animal Disposal Law."
>
> "II. Appellant could not, by any compliance with the terms of Chapter 278, Acts 1937, have obtained a license for and engaged in the interstate transportation of carcasses."
>
> "III. The Dead Animal Disposal Law is of a dual nature, containing both regulatory and prohibitory provisions."
>
> "IV. The transportation of and traffic in carcasses of dead animals is a subject fairly within the police power of the State of Indiana so long as the regulatory statute is not aimed at interstate commerce; does not impose a direct burden upon it or discriminate against it; bears a reasonable relation to the legitimate purpose

of the enactment; and does not conflict with any congressional act."

"V. The prohibition of interstate commerce in carcasses of dead animals, intrastate commerce therein being permitted, is not regulation of but is discrimination against interstate commerce to the point of extinction, in violation of the commerce clause of the Constitution of the United States" (R. 59-60).

The Supreme Court of Indiana treated these Federal questions as properly raised and passed upon them. In affirming the judgment of the trial court, that Court said in its opinion, 17 N. E. 2nd. 92, that:

"A number of propositions are presented and urged in support of the appellant's contentions, but we believe that they may be fairly summarized as follows: That since the statute authorizes the transportation of carcasses of dead animals over the highways of the state but limits such transportation to carriers of licensed operators of reduction plants in this state, the effect of the statute is to prohibit interstate commerce of such dead animals in violation of article 1, section 8, clause 3 of the Constitution of the United States."

The Court considered such contentions and discussed them, concluding its opinion with the statement that—

"The provisions of the act against interstate transportation may therefore be considered as in the nature of a quarantine against the bringing into this state of contaminated vehicles that have been used in the transportation of dead animals. We believe that such a quarantine is justifiable and reasonable; that it bears a direct relationship to the objectives sought by the act considered as a whole, and that any interference with interstate commerce is merely incidental."

Thus it appears affirmatively from the record that the Federal questions were presented at the earliest opportunity in the trial court; were presented for decision to the

highest court of the State of Indiana having jurisdiction; that its decision of the Federal questions was necessary to the determination of the cause; that it actually decided the Federal questions; that the judgment as rendered could not have been given without deciding them; and that its decision was in favor of the validity of the State statute.

**Cases Believed to Sustain the Jurisdiction and Show the Federal Questions are Substantial.**

The gist of the offense charged is the transportation of interstate commerce of the carcass of a dead animal not intended for human food, in violation of the Indiana Dead Animal Disposal Act, Chapter 278 (Section 11, Clause 2) of the Indiana Acts of 1937. There was no charge that the vehicle used or the other circumstances of the transportation were unlawful. There was no proof that the vehicle used or the other circumstances of the transportation did or in any manner could injure the public health, tend to spread disease, or create a nuisance. The evidence was that by the terms of that statute, appellant could not have obtained a license for transportation of a carcass into any other State (R. 32).

Though the State of Indiana had power to abolish all commerce in bodies of dead animals, intrastate as well as interstate, it did not go to that extent by Chapter 278, Acts of Indiana 1937.

On the contrary, that statute contains both regulatory and prohibitory provisions; it regulates and sanctions intrastate commerce in carcasses (Sections 1, 4 and 6 and following of Chapter 278, Acts of Indiana 1937) but extinguishes and prohibits interstate commerce in carcasses (Section 11, Chapter 278, Acts of Indiana 1937).

Regulation of the transportation of and traffic in carcasses of dead animals is fairly within the police power of the

State of Indiana so long as the regulatory statute is not aimed at interstate commerce; does not impose a direct burden upon it or discriminate against it; bears a reasonable relation to the legitimate purposes of the Act; and does not conflict with any congressional statute: *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497.

But the bodies of dead animals not slaughtered for human food have a commercial value as the Supreme Court of Indiana mentions; and though by said Act the commerce is limited to the State of Indiana, within that State commerce in dead bodies of animals continues: *Clason* v. *State*, 17 N. E. 2nd 92 (R. 9).

Prohibition of interstate commerce in a commodity of commercial value in which intrastate commerce is still permitted is prohibition and a discrimination whether it is styled a quarantine or a regulation:

*Minnesota* v. *Barber*, 136 U. S. 313;
*Brimmer* v. *Nebman*, 138 U. S. 78;
*Voight* v. *Wright*, 141 U. S. 62;
*West* v. *Kansas Natural Gas Co.*, 221 U. S. 229;
*Foster* v. *Haydel*, 278 U. S. 1;
*Pennsylvania* v. *West Virginia*, 262 U. S. 553.

And the prohibition of interstate commerce alone is a violation of the Commerce Clause of the Constitution and is not a reasonable incident to the exercise of police power, for purposes of quarantine or regulation, by the State of Indiana.

*Hannibal, etc., Co.* v. *Husen*, 95 U. S. 465.

The State of Indiana has no power to prevent privately owned articles of trade, such as carcasses of dead animals, from being transported and sold in interstate commerce; the rights of private ownership entitling appellant as the

owner to the protection of the commerce clause of the Constitution.

*West* v. *Kansas Natural Gas Co.*, 221 U. S. 229;
*Pennsylvania* v. *West Virginia*, 262 U. S. 553.

Inasmuch as every declared purpose of Chapter 278 Acts of Indiana 1937, viz. the limitation of the spread of disease, the protection of the public health, and the prevention of nuisances, could be accomplished by identical regulatory provisions for interstate and intrastate commerce alike, the prohibition of interstate commerce in carcasses of dead animals has no reasonable relation to the regulation of intrastate traffic therein.

Therefore we submit that the question as to whether Chapter 278 of Acts of Indiana 1937, for the violation of which by transporting a dead animal in interstate commerce, is invalid as in contravention of Article I, Section 8, Clause 3 of the Constitution, is a substantial Federal question; that the opinion and judgment of the State Supreme Court could not have been rendered or entered without denying to appellant all of the rights asserted by him under the said constitutional provision; that said opinion and judgment cannot be rested upon any independent non-Federal ground; that the judgment definitely and clearly draws in question the validity of said statute on the ground of its being repugnant to the Constitution of the United States, within the contemplation of Section 237 (a) of the Judicial Code, as amended; and that this appeal comes within the proper jurisdiction of this Court.

Respectfully submitted,

WILLIAM H. THOMPSON.

## EXHIBIT "A".

### Opinion of Supreme Court of Indiana, Dated November 1, 1938.

(17 N. E. 2nd 92.)

THE STATE OF INDIANA:

IN THE SUPREME COURT, MAY TERM, 1938.

On the 1st day of November, 1938, being the 139th Judicial day of said May Term, 1938.

No. 27099.

Hon. James P. Hughes, Chief Justice; Hon. George L. Tremain, Hon. Michael L. Fansler, Hon. Curtis G. Shake, Hon. Curtis W. Roll, Associate Justices.

In the Case of

GERRIT W. CLASON

*vs.*

STATE OF INDIANA.

Appealed from the Elkhart Circuit Court.

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

SHAKE, *J.*:

The appellant was charged by affidavit with unlawfully transporting a dead animal, not slaughtered and intended for human food, over a highway of this state to a disposal plant located in Illinois, without being licensed as provided in chapter 278, Acts 1937, Burns' Ann. St. 1933, §§16-817 to 16-837 (Pocket Supp.). There was a trial by the court, the evidence being stipulated, and the appellant was found

guilty and fined. He has appealed, assigning that the affidavit upon which he was prosecuted did not charge a public offense and that the court erred in denying his motion in arrest and in denying him a new trial.

This is the second appeal of this cause, the former case being reported as State *v.* Clason, Ind. Sup. (1938) 12 N. E. (2d) 750, 13 N. E. (2d) 307. That appeal involved only the sufficiency of the charge. This court held the affidavit good and, on the authority of the former opinion, we now hold that there was no error in overruling appellant's motion to quash the affidavit filed subsequent to the first appeal.

It is conceded by the appellant that "insofar as this statute prescribes the kind of vehicles and the manner in which (but not the places to which) carcasses may be transported over the highways of this State, the statute appears to be within the scope of the police power; does not conflict with federal legislation; and bears a reasonable relation to the declared purpose of the enactment, viz., the limitation of the spread of disease, the protection of the public health, and the prevention of nuisances".

A number of propositions are presented and urged in support of the appellant's contentions, but we believe that they may be fairly summarized as follows: That since the statute authorizes the transportation of carcasses of dead animals over the highways of the state but limits such transportation to carriers of licensed operators of reduction plants in this state, the effect of the statute is to prohibit interstate commerce of such dead animals in violation of article 1, section 8, clause 3 of the Constitution of the United States. Appellant's position may be illustrated by this hypothetical situation: Since a person operating a vehicle constructed and equipped as required by the act, may obtain a license for its use in transporting dead animals to a licensed reduction plant in Indiana, but may not employ a like vehicle, possessing the same sanitary features, to transport dead animals across the boundaries of this state, the statute must be construed as prohibitory and not merely as regulatory.

It is important, we think, to keep constantly in mind the nature of the objects with which the statute deals. That

the carcasses of large animals not killed for human consumption are inherently dangerous to the public health and liable to become nuisances, is clearly disclosed by the stipulation upon which the case was tried below. It was there shown that a majority of such animals die from contagious or infectious diseases, many of which are readily transmissible to human beings; that in the case of such dead animals decomposition starts within five hours after death, and that if such carcasses are not disposed of within twenty-four hours they will produce noxious odors over a wide area; that contagious and infectious diseases may be communicated to man and beasts by the transportation of the bodies of such dead animals upon the highways, but that the dangerous incident to such transportation may be minimized by the proper cleansing and disinfecting of the vehicles employed for that purpose. It was further stipulated that there are now thirty-eight disposal plants in the state of Indiana, licensed and operating under the act; that these plants are so distributed and equipped as to dispose of the bodies of all large animals not intended and slaughtered for human food, as die within the limits of the state, and that the state of Indiana has a state veterinarian and facilities for the enforcement of the act. One provision of the statute provides that: "After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies." Acts 1937. Ch. 278, §11 (e), Burns' 1933, §16-827 (e) (Pocket Supp.)

It seems clear, therefore, that the statute under consideration is not dealing with an article of commerce as that term is ordinarily used and understood. And while it may be conceded that the bodies of dead animals have a commercial value, we do not think that it is to be doubted that the state

of Indiana might, by appropriate legislation, have specifically provided that there should be no commerce in such bodies, but that the same should be destroyed without recompense to the owners thereof.

In the case of City of Indianapolis *v.* Ryan (1937), 212 Ind. 447, 7 N. E. (2d) 974, this court held that it was within the proper function of the Legislature to regulate the disposition of garbage and to provide for its destruction, notwithstanding its intrinsic value. We think it equally clear that it would be within the purview of our General Assembly to prohibit the importation into this state of the carcasses of large dead animals not slaughtered for human consumption. In the case of Bowman *v.* Chicago & Northwestern Ry. Co. (1888), 125 U. S. 465, 31 L. Ed. 700, the Supreme Court of the United States made this observation relative to the powers of the state to impose quarantine provisions: "Doubtless the States have power to provide by law suitable measures to prevent the introduction into the States of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of smallpox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self protecting power of each State, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution."

But one question remains, and that is whether the state, in the exercise of its police power, may prohibit the interstate transportation of dead animals by a plan that allows intrastate transportation by its licensees under such circumstances that may result in the profitable handling of such articles within the state. As we have already suggested, it is not to be doubted but that the state might have set up and operated its own disposal plants. If this had been

done, the effect would have been to divert such dead bodies of every semblance of merchantable property. Instead of adopting this means of coping with the problem, the General Assembly has authorized the plan embraced in the statute. It was apparently found that by licensing carriers and disposal plants, by-products might be salvages sufficient to render the business profitable to the licensees, thereby relieving the state of the burden of dealing directly with the problem. The principles of constitutional law that protect interstate commerce are no more basic or sacred than those that protect private property from confiscation. It follows, *a fortiori*, that the inherent police power of the state, in dealing with a subject of this character, is sufficient to divest the carcasses of dead animals of their attributes of commerce. And it may be pointed out that if the statute under consideration was construed as severable in character, so that the regulatory features might be preserved, and interstate traffic permitted, as appellant contends, this construction might result in destroying the whole plan. If a substantial percentage of these carcasses were exported from the state through the operation of interstate commerce, those remaining within the state might be so reduced in quantity that it would no longer be profitable for licensees to operate their plants. The state would then be confronted with the problem of incurring great expense to dispose of those remaining, and this expense might well be increased by a reduction in the return from the byproducts recoverable.

We have already quoted from a section of the act which requires that vehicles and the feet of draught animals used in transporting carcasses to the licensed disposal plants of the state, shall be thoroughly cleansed and disinfected after each delivery and before again going upon the highways of the state. It must be presumed that the state has ample facilities for the enforcement of this provision. If the transportation of dead animals from points within this state to places beyond its boundaries is to be permitted, it is conceivable that vehicles used for that purpose will spread disease in this state upon their return. It is no answer to this problem to say that the state might impose

like standards for vehicles used in interstate transportation as are required by the terms of the act. The impracticability of adequate inspection would defeat the ends sought and would place upon the state veterinarian, or some other public agency, the burden of constantly policing every one of the many public highways leading into the state. The provisions of the act against interstate transportation may therefore be considered as in the nature of a quarantine against the bringing into this state of contaminated vehicles that have been used in the transportation of dead animals. We believe that such a quarantine is justifiable and reasonable; that it bears a direct relationship to the objectives sought by the act considered as a whole, and that any interference with interstate commerce is merely incidental.

The judgment of the Elkhart Circuit Court is affirmed.

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## EXHIBIT "B".

### Opinion of Supreme Court of Indiana Reversing on First Appeal, February 7, 1938.

(12 N. E. 2nd. 750).

THE STATE OF INDIANA:

IN THE SUPREME COURT, NOVEMBER TERM, 1938

On the 7th day of February, 1938, being the 67th Judicial day of said November Term, 1937.

#26905.

Hon. Curtis W. Roll, Chief Justice; Hon. James P. Hughes, Hon. George L. Tremain, Hon. Michael L. Fansler, Hon. Curtis G. Shake, Associate Judges.

In the Case of

STATE OF INDIANA

*vs.*

GERRIT W. CLASON.

Appealed from the Elkhart Circuit Court.

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

SHAKE, *J.:*

The appellee, as defendant below, was charged by affidavit in one count with a misdemeanor for the violation of Chapter 278, Sec. 11, Acts of 1937. There was a motion to quash on the grounds (1) that the facts stated in the affidavit did not charge a public offense, and, (2) that the affidavit contained matter which, if true, constituted a legal justification of the offense charged. The trial court sustained the motion to quash and discharge the defendant, with a finding that the statute is unconstitutional. It was not claimed that the charge was otherwise insufficient, and the State has appealed.

The affidavit alleges in substance that on a date named therein the defendant unlawfully hauled and transported over a certain public highway in Elkhart County, Indiana, to a disposal plant located in the State of Illinois, a dead horse, which had not been slaughtered and intended for human food, the defendant not being licensed so to do, as required by the above act.

The act upon which the prosecution was based is lengthy and we deem it sufficient for the purposes of this appeal to summarize its pertinent provisions. The title discloses that its purpose is to "control animal diseases and to regulate the transportation and disposal of the bodies of dead animals". The first section recites that it is an exercise of the police power of the State to prevent the spread of animal diseases, to conserve the public health, and to protect the citizens against dangers and nuisances. The act has

no application to persons slaughtering or butchering animals for human consumption, nor to the transportation of the products thereof. The disposal of the bodies of dead foul, birds, fish, reptiles and of small animals, such as dogs and cats and small game, are likewise exempted.

Standards for disposal plants are set up and frequent inspections thereof provided for. Annual licenses are required for these establishments and the cost of administering the act is paid out of the proceeds thereof. Only holders of licenses may operate vehicles for the transportation of dead animals on the public highways of the State, and there are express requirements as to the equipment of these vehicles. The beds in which dead animals are hauled shall be tight, so as to avoid drippings and seepings, shall be of sufficient size and depth to hide the contents thereof from the view of other persons using the highways, and such vehicles are required to be thoroughly cleansed and disinfected after use. The act authorizes the owner of any dead animal to bury or burn the same on his own premises, if they are without the corporate limits of any city or town; such owner may also salvage the skin of any dead animal and transport it to market, if such animal shall not have died of a contagious disease.

Appellee's brief has been of no aid to the court in the consideration of this case. It contains no helpful propositions, and no points and authorities, beyond the bare assertion that the act upon which the prosecution is based violates Article I, Section 8, Clause 3, of the Constitution of the United States. This is the so-called interstate commerce clause, and it provides: "The congress shall have power to * * * regulate commerce * * * among the several states."

While the laws of the state must yield to the Acts of Congress passed in execution of the powers conferred upon it by the Constitution, the mere grant to Congress of the power to regulate commerce among the states does not, of itself and without legislation by Congress, impair the authority of the states to establish such reasonable regulations as are appropriate for the protection of the health, the lives and the safety of their people. New York, etc. R. Co. v.

New York (1897), 165 U. S. 628, 631, 17 S. Ct. 418, 41 L. Ed. 853.

When the local police regulation has real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority. Savage *v.* Jones (1912), 225 U. S. 501, 32 S. Ct. 715, 56 L. Ed. 1185; Austin *v.* Tennessee (1900), 179 U. S. 343, 349, 21 S. Ct. 132, 45 L. Ed. 224, affirming (1898) 101 Tenn. 563, 48 S. E. 305, 70 Am. St. Rep. 703, 50 L. R. A. 478.

Under the exercise of the police power it has been held that a state may adopt laws: Prohibiting the shipment out of the state of citrus fruits which are unripe or otherwise unfit for consumption, Sligh *v.* Kirkwood (Fla. 1915), 237 U. S. 52, 35 S. Ct. 501, 59 L. Ed. 835; prohibiting the slaughtering of calves unless in healthy condition and at least four weeks old, and prohibiting the shipment of veal from such animals to or from any part of the state, People *v.* Bishopp (1904), 44 Misc. Rep. 12, 89 N. Y. S. 709; prohibiting healthy persons either from within or without the State, entering an area infected with a contagious disease. Compagnie Francaise *v.* Louisiana State Board of Health (1902), 186 U. S. 380, 385, 22 S. Ct. 811, 46 L. Ed. 1209; prohibiting the disinterment or exhuming of the body of a deceased person, even when it is intended to transport the remains of an alien to his own country for final sepulture, without first obtaining a permit from the proper officer, In re Wong Yung Quy (C. C. Cal. 1880), 2 Fed. 624.

It has not been pointed out to us wherein the subject-matter of the act before us conflicts with any federal legislation, and we know of none. We find nothing in its purposes or provisions repugnant to the settled principles of constitutional law. The wisdom of the law was for the determination of the legislative branch of the government and we think the objectives being for the protection of the public health, the health of domestic animals of great economic value, and the prevention of nuisances on the highways of the State were all within the purview of the powers of the General

Assembly. We are obliged to indulge the presumption that the act is constitutional unless and until the contrary is made to appear. Weisenberger *v.* State (1931), 202 Ind. 424, 175 N. E. 238; Levy *v.* State (1903), 161 Ind. 251, 68 N. E. 172; Overshiner *v.* State (1901), 156 Ind. 187, 59 N. E. 468. We therefore hold the act valid and that the affidavit charged a public offense.

Reversed with directions to overrule appellee's motion to quash and to require him to plead to the charge.

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## EXHIBIT "C".

### Opinion of Supreme Court of Indiana Denying Rehearing on First Appeal, March 10, 1938.

(13 N. E. 2nd 307.)

THE STATE OF INDIANA:

IN THE SUPREME COURT, NOVEMBER TERM, 1937.

On the 10th day of March, 1938, being the 94th Judicial day of said November Term, 1937.

#26905.

Hon. Curtis W. Roll, Chief Justice; Hon. James P. Hughes, Hon. George L. Tremain, Hon. Michael L. Fansler, Hon. Curtis G. Shake, Associate Judges.

In the Case of

STATE OF INDIANA

*vs.*

GERRIT W. CLASON.

Appealed from the Elkhart Circuit Court.

Come the parties by their attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by

SHAKE, *J.*:

Petition for rehearing denied.

And afterwards to-wit: on the 10th day of March, 1938, being the 94th Judicial Day of the November Term, 1937, appellee's petition for rehearing was denied with the following opinion pronounced by Shake, J.

In our original opinion we said: "Appellee's brief has been of no aid to the court in the consideration of this case. It contains no helpful propositions, and no points and authorities, beyond the bare assertion that the act upon which the prosecution is based violates Article I, Section 8, Clause 3, of the Constitution of the United States". The appellee, through other counsel, has now presented a petition for rehearing, supported by an able and exhaustive brief. For this reason we deem it proper to express our views with reference to the propositions therein contained.

We find no objection to the statement of general principles contained in appellee's petition, to the effect that in passing upon the constitutionality of an act, its purpose must be determined from its natural and reasonable effect; that the legislative declaration of purpose is not binding, and that whether a regulation of a useful business is a valid exercise of police power is a judicial question.

The appellee has cited a number of cases from this court and from the Federal courts to sustain his claim that the statute under consideration constitutes an unauthorized interference with interstate commerce. One of the clearest and most comprehensive statements that we have seen with reference to the authority of the states to legislate upon such subjects, is to be found in the case of Oregon-Washington Railroad and Navigation Co. *v.* State of Washington (1926), 270 U. S. 87. In that case Mr. Chief Justice Taft said: "In the relation of the States to the regulation of interstate commerce by Congress there are two fields. There is one in which the State can not interfere at all, even in the silence of Congress. In the other * * * the State may exercise its police power until Congress has by affirmative legislation occupied the field by regulating interstate commerce and so necessarily has excluded state action". In the same case

the distinguished jurist further says: "In the absence of any action taken by Congress on the subject matter, it is well settled that a State in the exercise of its police power may establish quarantines against human beings or animals or plants, the coming in of which may expose the inhabitants or the stock or the trees, plants, or growing crops to disease, injury or destruction thereby, and this in spite of the fact that such quarantines necessarily effect interstate commerce".

If a state may, in the exercise of its inherent police power, adopt quarantine statutes prohibiting the importation of dangerous or noxious articles or objects, we think it may likewise, inferentially, license and regulate the use of its highways to accomplish the same ends, even though such regulation may incidentally affect interstate commerce. Kidd *v.* Pearson (1888), 128 U. S. 1.

It seems to us that the proper disposition of this appeal is to be found in the answers to these questions: (1) Is Chapter 278, Acts of 1937, a reasonable quarantine regulation within the police power of the State which incidentally affects interstate commerce, or (2) is it a direct interference with interstate commerce, under the guise of an exercise of the police power?

We cannot, in the interest of space and time, review all of the authorities cited by the appellee, but shall point out wherein several of them are not applicable to the situation with which we are here dealing. The cases reviewed are typical of the others relied upon.

In The State, *ex rel.* Corwin *v.* The Indiana, etc., Mining Co. (1889), 120 Ind. 575, 22 N. E. 778, this court considered an act prohibiting the transportation of natural gas from any point within this State to any point or place without the State. The court held that the interference with interstate commerce, under the circumstances shown, was direct and not merely incidental. In the opinion Chief Justice Elliot said: "The act does not assume to provide for the safety, health, or comfort of the citizens * * *. It is not a regulation of the mode of procuring, transporting, or using natural gas designed to secure the health, safety, or comfort of the citizens of Indiana. * * * The act can not be taken

out of the operation of the Federal decisions upon the theory that it is a valid exercise of the police power resident in every sovereign state, for the theory is without foundation".

In Jamieson *v.* The Indiana Natural Gas & Oil Co. *et al.* (1891), 128 Ind. 555, 28 N. E. 76, this court had under consideration another natural gas statute which prohibited the transportation of gas within or without the State under artificial pressure exceeding 300 pounds per square inch. In holding the statute valid, the court remarked: "We do not assume that a State can legislate for the regulation of interstate commerce—that power is undoubtedly Federal—nor do we assume that under the guise of exercising the police power there may be a regulation of commerce between the States, but we do assume that it is settled by the decisions that State legislation is not invalid simply because it operates upon or affects commercial commodities or instrumentalities. So long as there is nothing more than an exercise of the police power, and no regulation of commerce, there is nothing more than the exercise of a State power."

In Manufacturers Gas etc. Co. *v.* The Indiana Natural Gas, etc., Co. (1900), 155 Ind. 545, 58 N. E. 706, this court held another statute regulating the transportation of natural gas unconstitutional, and said: "Nothing done by the appellee is complained of, excepting only that it removes natural gas out of the State of Indiana. No ground for the exercise of the police power of the State to prevent such removal is shown. Nothing, save the naked right to transport the gas beyond the limits of this State, is contested in this action. The only reason which can be urged in support of the restraint sought to be imposed upon the appellee is that the supply of natural gas being limited, and the article being one of great value and convenience, its use ought to be reserved for and enjoyed by the people of this State, to the exclusion of the inhabitants of any other State".

The appellee has also cited and quoted from Foster-Fountain Packing Co *et al. v.* Haydel (1928), 278 U. S. 1, 73 L. Ed. 147. This is the so-called Louisiana "Shrimp case" and involved the constitutionality of a statute of that state which prohibited the shipment to other states of shrimp taken from the waters of Louisiana, unless they were processed in its factories. The act related directly to inter-

state commerce, and the court said: "But by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control". The act in question was in no sense a health or quarantine measure, and we do not consider it as bearing upon the proposition before us.

In the case of Vandalia Coal Co. *et al. v.* Special Coal & Food Comm. of Indiana *et al.* (1920), 268 Fed. 572, the court held invalid an order of the Coal and Food Commission of Indiana requiring coal mines which had contracted to deliver their products outside the State to sell them within the State. This was held to be a direct burden on interstate commerce. But the court recognized the presumption that a statute is valid until the contrary is shown, and that a state is free to "meet and combat" wrongs that injure "the safety and welfare of the people".

We adhere to our former opinion that Chapter 278, Acts of 1937, is for the protection of the public health, the health of domestic animals of great *en* economic value, and the prevention of nuisances on the highways. It does not directly or materially place a burden on interstate commerce, and the extent to which it affects commerce of that character may be said to be clearly incidental. We hold that until the Congress of the United States invades the field and legislates upon the subject, the act must be regarded as a proper and valid exercise of the inherent police power of the State of Indiana.

Rehearing denied.

## EXHIBIT "D".

### Chapter 278, Acts of Indiana, 1937 (Dead Animal Disposal Act).

CHAPTER 278, ACTS OF INDIANA, 1937.

*Disposal of the Bodies of Dead Animals.*

AN ACT to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect. (Chapter 278, Acts of the 1937 General Assembly.)

Effective April 1, 1937.

CHAPTER 278.

(H. 258. Approved March 12, 1937.)

AN ACT to control animal diseases and to regulate the transportation and disposal of the bodies of dead animals; providing penalties for its violation; repealing certain specific acts and all other laws and parts of laws in conflict therewith; and fixing a time when this act shall take effect.

CARCASSES OF DEAD ANIMALS—TRANSPORTATION AND DISPOSAL—POLICY DECLARED:

SECTION 1. *Be it enacted by the general assembly of the State of Indiana,* That it is hereby declared to be the public policy of the State of Indiana, acting through its general assembly, to control and regulate the transportation over the highways of this state and the disposal of the carcasses of dead animals, not slaughtered and intended for human food to the end that the spread of animal diseases in this state shall be controlled and also that the public health and welfare of the citizens of this state shall be conserved and protected against dangers, annoyances and nuisances that might arise from such carcasses and from such transportation and disposal thereof, if the same be not required by

law; and this act is designed to effectuate such purposes and public policy, through the exercise of the police powers of the state. This act shall be liberally construed to effect such policy and to promote such objects.

PERSONS—THINGS—TRANSACTIONS EXEMPT:

SEC. 2. Nothing contained in this act shall apply to or effect (affect) any of the following persons, matters, or vocations, to-wit:

(a) To any person slaughtering, butchering, manufacturing, or selling, in any manner, any animal flesh and products, where such animals are killed for the purpose of being used solely for human consumption, or to persons engaged in transporting and disposing of the dead bodies of any such animals so killed or of any parts or products thereof to any persons solely for such purpose and use.

(b) To any person transporting, disposing of, or selling the hides or skins of animals; or tanning such hides or skins for himself or other persons.

(c) To any bodies of dead fowls, birds, fish, reptiles, or small animals of any kind, such as dogs, cats and small game.

(d) To any governmental agency, collecting, transporting, or disposing of the bodies of any dead animals in any manner.

No provisions of any other laws or ordinances regulating any of the persons, matters or vocations aforesaid shall be affected or repealed by this act.

MEANING OF TERMS:

SEC. 3. That, as used in this act, unless a different meaning is required by the context and may be necessary to effectuate the purpose of this act, the following definitions shall apply:

PERSON:

(a) The term "person" shall include individuals of either sex, firms, co-partnerships, associations, joint ven-

tures and corporations, of all kinds and places of residence, or any other group or combination acting in concert; and the plural, as well as the singular number; and whether acting as a principal, trustee, receiver, or as any other kind of legal or personal representative; or as the successor in interest, assign, agent, factor, servant, employee, director, officer, or any other representative of any such person.

GENDER:

(b) The masculine gender shall include the feminine and neuter genders; and the singular number shall include the plural number as to all words and phrases.

DISPOSAL PLANT:

(c) The term "disposal plant", or "plant", shall apply to and include any plant and all the equipment thereof described or referred to in any section of this act, that is constructed and intended to be operated for the disposal of the bodies of dead animals by means either of burying, or burning, or cooking, or other method herein prescribed, or hereafter provided for by law and not otherwise defined; and shall also include all substations of any such plant that are used in connection with such business solely for the temporary deposit or storage of such dead bodies that are transported thereto by a licensee pending final delivery thereof to any such disposal plant; and shall also include all vehicles and equipment thereof used by a licensee for the transportation of such bodies to such plant for their disposal therein in any manner herein prescribed.

STATE VETERINARIAN:

(d) The term "state veterinarian" shall mean the officer now designated by statute under such name; and in the event of any subsequent change of such title, or duties, it shall be deemed to refer to and mean the particular official or body of this state designated by statute to succeed to and perform either the same or similar duties required under this act; or if not so designated by statute, the governor shall designate some official for such purposes.

DISPOSAL PLANT—OPERATION—LICENSE FOR—UNLAWFUL ACTS:

SEC. 4. (a) No person shall engage in this state in the business of operating a disposal plant, as herein defined, without first obtaining for each such disposal plant so operated by him, or in his behalf, a license and any vehicle certificates required, as herein provided; and no person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, shall either transport over any highways of this state, or dispose of to any person, the bodies of any dead animals in any manner herein prescribed, or in any other manner not permitted by law.

STATE VETERINARIAN—RECORD:

(b) The said state veterinarian shall keep a record of all applications for permits, licenses and vehicle certificates, showing all thereof issued, denied, or revoked by him, and such other facts as he may prescribe.

ACTS CONSTITUTING VIOLATIONS OF ACT:

SEC. 5. Any person, except one holding a license to operate such a disposal plant in this state, or who is acting for such licensee, or who is otherwise excepted by this act, who shall advertise either in any newspaper having a general circulation in any county of this state, wheresoever published, or in any manner by written, printed, typed or painted matter of any character, or by signs or any kind of other devices, whereby he shall indicate that he is engaged in transporting and disposing of dead animals in any manner and for any purpose not excepted in this act; or who shall obtain from any other person, by purchase or otherwise, the body of any such dead animal, in whole or in any part, for the purpose of transporting the same over any highway of this state, and of disposing of the carcass, or the hide, skin, grease, or other products, of such dead animal, to any person or by any method designated to effect a profit therefrom for himself, shall be guilty of violating this act, and shall be subject to all the penalties of this act.

LICENSE—APPLICATION FOR—CONTENTS—FEE:

SEC. 6. Any person desiring a license to engage or continue in such business under this act, shall file an application for such license with the state veterinarian, on a form provided by him without charge, which application shall set forth the name and residence of the applicant, the location of his place of business, the particular method, or methods, which he intends to employ, or is employing, in the transportation and in the disposal of the bodies of such dead animals; the number and location of all substations he desires to operate, if any; the number and kind of vehicles he will use; and such other essential information relative thereto as such officer, by his rules and regulations, may require. Such application shall be accompanied by an initial installment of $100.00 on the total annual license fee, to apply upon the expenses imposed by this act: Provided, however, That any person, now having or operating a disposal plant, with or without any substations, and holding an annual license therefor, under existing law, shall be entitled to continue such operation until the date such license expires; but not later than thirty days prior to such date of expiration, he must apply for a license under this act, and pay the fees as herein provided, if he desires to continue such business, without interruption, and thereby he shall have a right so to continue under his old license, by paying all annual fees, at the rates fixed by this act, until his new license under this act shall be granted, or if refused, until any such refusal shall be finally sustained upon any appeal taken by him from such decision.

LICENSE—APPLICANT—INVESTIGATION:

SEC. 7. (a) Upon receipt of such application, the state veterinarian, or some person appointed and designated by him, shall, within thirty days, if the applicant then is or has been the holder of a license under any prior statute in the conduct of an established business of such kind in this state, inspect the plant as herein defined, and the locality where such applicant is conducting or proposes to conduct such business, and shall ascertain whether or not such applicant

is a responsible and suitable person, financially and otherwise, to be entrusted with a license to conduct such business, and that he has fulfilled and complied with the requirements of all the sections of this act and of the rules and regulations herein authorized relating to such business.

LICENSE—ISSUANCE—WHEN:

(b) If such state veterinarian shall find that such applicant is such a responsible and suitable person to conduct such business, and that the disposal plant of such applicant, as herein defined, and the methods of operation thereof comply with all the provisions of this act and with the rules and regulations herein authorized, and that such business is located in a place permitted by this act, he shall thereupon issue to such applicant a certificate to that effect. Thereupon such applicant shall pay to said state veterinarian the further and final installment of $50.00 for said annual license fee and said state veterinarian shall issue to such applicant a license and four vehicle certificates and metal discs bearing the applicant's name and license number, one of which discs shall be attached to each vehicle so used, which license shall entitle him to operate one disposal plant and which certificates shall entitle him to operate not more than four vehicles for transporting bodies in such business; Provided, however, That for each such additional vehicle the licensee desires to operate he shall pay an additional annual fee of $5.00 and procure an additional vehicle certificate and disc, and for each sub-station located elsewhere than on the grounds of the disposal plant he shall pay an additional annual license fee of $20.00 and procure a sub-station license: and Provided, further, That the full annual license and other fees specified in this act shall be paid for any licenses and vehicle certificates issued in any year on or prior to June 30, and one-half of all such fees shall be paid for the first year for any such license or vehicle certificate issued in any year after June 30.

LICENSES—EXPIRATION:

(c) All licenses and vehicle certificates issued under this act shall remain effective until and unless voluntarily sur-

rendered, or suspended or revoked, as provided in this act; conditioned, however, upon payment to the state veterinarian on or before January 15 of each calendar year subsequent to the year of issue, of the required total annual license and other fees herein provided for and specified, as aforesaid, which payment shall operate, without further application, to continue such licenses and vehicle certificates in full effect during each calendar year for which such license and other fees shall be paid, unless sooner surrendered, or suspended or revoked, as herein provided.

INSPECTIONS OF PLANT—WHEN—ADDITIONAL INSPECTIONS—FEES:

SEC. 8. (a) Whenever the state veterinarian, by his first inspection of the applicant's plant, as herein provided, shall find that the applicant has not complied with all the requirements of this act and of such rules and regulations, he shall at once notify the applicant in writing, delivered in person or by registered mail, with return receipt, specifying the particulars of such failure to comply therewith and of any further objections he may have. Upon being notified in like manner by the applicant in writing of such compliance and that such plant conforms to the requirements of this act and of such rules and regulations, the state veterinarian shall, within ten days, make a similar second inspection thereof, but shall not be required to make more than two of the aforesaid initial inspections of the same plant under one application and the original payment of fees, unless he so desires. If one or two inspections additional to the second inspection are desired by the applicant in effecting a compliance by him with the requirements of this act, such applicant shall request the same in writing and pay in advance additional inspection fees of $25.00 for each such inspection so requested by him; but for any further such inspections he shall pay a fee of $100.00 each.

FEES—DISPOSITION:

(b) In the event such applicant shall be refused a license and such refusal be finally sustained upon any appeal, no part of the fees paid by him shall be refunded, but all thereof

shall belong to the State of Indiana, as a part of its general fund.

DISPOSAL PLANTS—NEW OR RECONSTRUCTED—LICENSE—APPLICATION—CONTENTS—FEES:

SEC. 9. (a) Any person not owning or in control of and now operating an established plant, but desiring to engage in such business and to construct a new plant, or reconstruct and re-open a plant previously closed, shall first file with the state veterinarian, on a form furnished without charge by him, an application for a permit for such purpose, with such information as may be required, together with a set of detailed plans and specifications for the plant so proposed to be constructed or reconstructed, and shall also pay therewith to the state veterinarian a fee of one hundred dollars to cover the additional expense of investigating and passing upon such application and as the initial payment upon the license fee, if granted or denied. Such applicant shall also set out a general statement of his proposed plan and method of operating said business and said plant, and shall show that it is proposed to be located or continued in a place permitted by this act. Said state veterinarian is authorized to submit such plans and specifications and other information to any qualified architects and engineers employed in any other department of the state government, or if necessary, to submit the same to any such qualified person not employed by the state and to pay the latter out of the fee aforesaid a sum not exceeding $100.00 for examining such plans and specifications and advising him whether the same comply with the provisions of this act. The aforesaid initial and final payments shall be made regardless of the time in any year such application shall be filed.

VETERINARIAN—INSPECTION—LICENSE—FEE:

(b) If the state veterinarian shall find that such applicant is a responsible and suitable person to conduct such business and that such plans and specifications and proposed method and place of conducting such business comply with all the requirements of this act and of such rules and regulations, he shall thereupon issue to such applicant a permit to con-

struct or reconstruct such plant. Upon the completion of such plant and before the same is placed in operation, such applicant shall notify the state veterinarian thereof, who shall thereupon make the same kind of inspections as are provided aforesaid for existing established plants, and in all respects the procedure established for such inspections and the issuance of a license, with the payment of the additional installment of $50.00 for the annual license fee and any required additional fees by such applicant, shall apply, and the license shall be either issued or denied in the same manner and subject to all the other provisions of this act; except that for each subsequent year the annual license and other fees shall be the same as for similar existing licensed plants.

NEW PLANS—LOCATION:

SEC. 10. (a) No such new plant shall be located or constructed, or any discontinued plant reconstructed or reopened, at any place in this state inside of, or within two miles of the nearest point of the corporate limits of any city or town; nor within one mile of the nearest boundary of the lands then owned or controlled in connection either with any state, county, township, city, or town park, or boulevard; or of any public school or hospital, or of any charitable, religious or educational institution.

EXISTING PLANT — DESTRUCTION — RECONSTRUCTION PROHIBITED—WHEN:

(b) In the event that any existing disposal plant shall have been or may be hereafter destroyed in any manner, except during the war, to the extent of at least two-thirds of the operating portion thereof, the same shall not be reconstructed and such site shall not be again used for such purpose, if it be located in or within the distance aforesaid from any of the places or objects designated in this section.

DEAD ANIMALS—HAULING—LICENSE:

SEC. 11. (a) No person, except as herein provided, may haul or transport over the highways of the State of Indiana the bodies of any dead animals, except those that have been slaughtered and are intended for human food, without first

obtaining and holding a license issued under the provisions of this act and which bodies are being transported to a disposal plant located in this state and operated by a person holding a license to engage in such business.

HAULING—LICENSE—QUALIFICATION:

(b) No license shall be issued to any person solely for the purpose of transporting the bodies of dead animals, but such transportation must be done solely by persons holding a license for disposal plants, so that such dead bodies may be properly and promptly disposed of under the requirements of this act; except that any public official of this state, charged by law with such duties, may remove or supervise the removal of any such dead bodies and the disposal thereof by any method provided for by this act where necessary to protect the public health and welfare.

HAULING—VEHICLES USED IN—SPECIFICATIONS:

(c) All vehicles used in the transportation of the bodies of dead animals, under the provisions of this act, shall have a tank or metal lining in the bed of such vehicle, or be otherwise so constructed that the same shall be practically watertight, so that no drippings or seepage from such dead bodies shall escape from such vehicles where this can be obviated; and all vehicles must have an end-gate constructed or lined with the same materials, and hinged at the bottom and fastened firmly at the top when closed and so designed, so far as practical, that drippings and seepings shall not escape from such part of said vehicle while engaged in such transportation; and every such vehicle shall have a bed of such depth and type of construction and equipment that any dead body or bodies therein shall be completely hidden from view of persons using the highways and any public nuisance obviated while being transported.

STATE VETERINARIAN—ADDITIONAL REGULATIONS—AUTHORIZATION:

(d) The state veterinarian may prescribe specific and also additional requirements, not inconsistent with the pro-

visions and purposes of this act, governing and regulating such transportation and the construction, equipment, maintenance and operation of such vehicles.

VEHICLES—CLEANSING—DISINFECTION:

(e) After the bodies of dead animals have been unloaded from any vehicle used for the transportation thereof to the disposal plant, on each trip, such vehicle and all parts thereof, and in the event draught animals are used to draw such conveyances, the feet of such animals, shall be thoroughly cleansed and disinfected in such manner and with such a solution as the state veterinarian shall prescribe by regulation, and in addition thereto all such vehicles shall be washed out thoroughly with steam or hot water after each use thereof in transporting such dead bodies.

BODIES OF DISEASED ANIMALS—HAULING—DRIVER—DUTY:

(f) Vehicles, when loaded with the body of an animal which has died of disease, shall be driven directly to the place of disposal, except that the driver may stop on the highway for other like dead bodies, but he shall not drive upon the premises of any person unless he first obtains the permission of such person and he shall avoid creating any nuisance during such transportation and in the event any drippings or seepage should escape from such vehicle, to his knowledge, he shall clean up the same and remedy such escape, if possible to do so.

DEAD ANIMALS—BODIES—DUTY OF OWNERS OR PERSONS CARING FOR:

SEC. 12. No person owning or caring for any animal that has died from any cause shall allow the body to lie about his premises. Any such body shall be disposed of by such person within twenty-four hours after knowledge of such death, either to a person licensed under this act to dispose of it, as herein provided for disposal plants; or by the owner or person entitled to such body causing the same to be buried within that time upon his own or any other avail-

able premises, where the transportation of said body along any highway of this state is not required. Any such burial shall be so done as not to produce a nuisance, and such body shall be buried to such a depth that no part thereof shall be nearer than four feet to the natural surface of the ground and every part of such body shall be covered with at least four feet of earth in addition to any other materials that may be used for that purpose. Provided, however, That any person so owning or controlling any dead animal, that has not died of a contagious disease, shall have the right to remove the hide or skin thereof on his own premises before burying such body as herein prescribed, but such skinning must be done and the disposition of such hide, or skin and body must be made in a manner that will avoid the creation of any nuisance. No body of any dead animal shall be hereafter burned or cooked, or otherwise disposed of, except by burial as in this section provided, at any place in this state except at a disposal plant licensed as provided in this act; or as may be otherwise excepted by this act. Nothing contained in this act shall be so construed as to prevent any person, residing outside of the corporate limits of any city or town, from disposing of the dead bodies of animals belonging to such person, by burning or burying such dead animals on the premises of such owner. Provided, further, That no person shall bury or burn the body of any dead animal within the corporate limits of any city or town, where the same is prohibited by law or ordinance.

DISPOSAL PLANTS—SPECIFICATIONS:

SEC. 13. No disposal plant shall be deemed a suitable or sanitary place for disposing of the bodies of dead animals by any process of cooking or burning, unless it conforms to the following minimum specifications:

BUILDING:

(a) The building must have four (4) walls complete and be provided with concrete or cement floors and with good drainage and be thoroughly sanitary in construction and maintenance; and any sewage, drainage, or waste water of any kind, if of an offensive or obnoxious character or odor,

detrimental to human, animal, agricultural or aquatic life, or that may constitute a public nuisance, shall not be permitted to escape therefrom until first treated as herein specified. All sewage, drainage, or waste water must first pass through a septic tank or a filter bed or covered settling pool, that will destroy all infection therein before passing therefrom and must not thereafter, at any time, empty or pass into any body of water, or any stream other than a running stream, or if emptying upon the ground, on the premises, of said plant, it must be absorbed by the soil and not be allowed to collect in open pools, or in any other manner so as to create a public nuisance.

EQUIPMENT:

(b) All such plants must be properly equipped and operated with steel tanks, enclosed dryers and cold water condensers, and on and after January 1, 1940, all bodies shall be reduced only by steam cooking in all plants operating in this state; except in emergencies, where burning may be permitted under regulations prescribed therefor by the state veterinarian.

TANKS:

(c) All tanks shall be airtight, except proper escapes for live steam, passing through the tanks during cooking, which steam shall be condensed by use of cold water condensers. All such equipment shall be so construed (constructed) and maintained as to prevent any avoidable escape of odors into the air.

DRY RENDERING:

(d) If a method of dry rendering is used, the heads and discharge doors of the vessels shall be of a type using gaskets, with the doors drawn tight with bolts against such gaskets, and with packing boxes around the agitator shafts, and with vent for drawing off condensation, so constructed that the discharge shall be condensed by the use of cold water condensers of sufficient capacity, and with all thereof and every other part and opening in such equipment so con-

structed and maintained that there will be no avoidable escape of odors into the air.

DISPOSAL OF BODIES—TIME LIMIT—EXCEPTIONS:

(e) All skinning and dismembering of bodies shall be done with- such building and in such manner and shall be so kept therein that no unnecessary annoyance shall be caused other persons by the conditions or unsightly appearance of such bodies of any parts and contents thereof; and all such bodies and all parts and contents thereof, shall be disposed of within twenty-four hours after delivery to such plant by some method herein specified; except where rendered impossible by accident or other casualty preventing the operation of the plant, or except where some epidemic or act of God has caused more bodies to be accumulated than can be reasonably disposed of within such period of time by the continuous operation of the plant; in any of which events the plant shall be placed in operation as soon as possible and shall be operated continuously until all bodies are disposed of.

BURNING—REGULATIONS:

(f) In the event any bodies, or parts thereof, are disposed of at such plant at any time by burning, the place and equipment used therefor shall be so located, constructed, arranged, maintained and operated that no avoidable odors will escape into the air; and all portions of such bodies not so entirely consumed, or that may be otherwise left undisposed of, shall be buried, as herein provided.

BURIAL OF BODIES—DUTY:

(g) In the event any bodies, or parts of bodies, are disposed of at said plant by burying the same, this shall be done in the same manner and period of time after receiving the same as is provided in this act such (for) such burial by the owner or person controlling such bodies prior to disposition thereof to any such plant.

NUISANCE PROHIBITED:

(h) Such disposal plant shall be so situated, constructed and maintained and all operations therein so conducted as

all times as not to create and continue unnecessarily a public nuisance.

RULES AND REGULATIONS—EFFECTIVE—WHEN:

SEC. 14. The state veterinarian shall make, publish and enforce such reasonable rules and regulations relating to such disposal plants and dead bodies and all matters connected therewith, as he may deem advisable and which are not inconsistent with any of the provisions of this act. All such rules and regulations shall be in writing or printed and two copies thereof shall be sent to each person holding or receiving a license under this act, also to the clerk of each county in this state, which rules shall be forthwith spread of record and properly indexed for reference thereto, and no such rule or regulation, or any subsequent changes therein, shall be effective until ten days after such copies shall have been mailed to the last of such county clerks and to each such licensee, a record of which mailing shall be entered by such state veterinarian on his records. Such rules and regulations shall have the force and effect of law and all persons within the provisions of this act shall obey and comply therewith.

STATE VETERINARIAN—PLANTS—INSPECTION OF—DUTY:

SEC. 15. The state veterinarian, in person or by anyone authorized by him, shall inspect each plant and place licensed under this act at least once each year, and as often as he may deem necessary, and shall see that the licensees and all other persons comply with this act and conduct such business in conformity to this act and to the rules and regulations made and published by him pursuant thereto.

LICENSES — SUSPENSION — REVOCATIONS — GROUNDS —HEARING—PROCEDURE—ORDER—APPEAL—PROCEDURE:

SEC. 16. The state veterinarian shall have power to suspend for any fixed period, or to revoke the license held by any licensee under this act, in the event such licensee shall violate and fail or refuse to obey any of the provisions of

this act, or of the aforesaid rules and regulations; or in the event any licensee has been finally convicted of violating the laws of this state or of the United States in any manner affecting his conduct of said business; or in the event the state board of health shall certify in writing to the state veterinarian that any particular disposal plant is a menace to the public health, stating the charges specifically and definitely, in which case the hearing hereinafter provided for shall be held within thirty days after such charges of said board are so filed: Provided, however, That before any license shall be suspended or revoked, the licensee shall be furnished with a written copy of the charges made against him and a hearing shall be had before the state veterinarian, or his authorized representative, at such time and place as he may fix, upon at least ten (10) days notice in writing to the licensee, to determine whether such license shall be suspended or revoked, which notice may be served either by registered mail, with return receipt, addressed to such licensee at the address shown in his application, or in the manner provided by law for the service of a summons. At the time and place fixed for the hearing, the licensee may appear in person and by counsel and such charges shall be deemed denied, without any answer thereto, unless the licensee desired to file an answer. The hearing shall be conducted in a summary manner, under such procedure as the rules and regulations may prescribe, and the state veterinarian, or his representative, shall receive and hear all the evidence and arguments offered by both parties and shall afford the licensee full opportunity to present all defenses available to him. When a hearing under this section is conducted before a representative of the state veterinarian, a written report and summary of the evidence at such hearing shall be made by him to the state veterinarian, with recommendations for action thereon. The state veterinarian, after such hearing before him, or after considering such report and summary of the evidence by his representative, shall render such decision and make such order in the premises as he may deem just, either dismissing the proceedings, or suspending the license for any fixed period, or revoking the license, which order shall be entered on his records and

written notice thereof shall be forthwith mailed by registered mail, with return receipt, to or served personally upon such licensee: and, Provided, further, That any licensee affected adversely by any such decision and order of the State veterinarian may appeal therefrom to the Circuit Court or Superior Court of the county in which the plant is operated by the licensee, by filing in such court, at any time within thirty days after the day on which such decision and order is entered of record, a complaint to rehear such charges, which complaint shall name the state veterinarian as the sole defendant and shall be sufficient if it set out a copy of the charges of any answer filed, upon which such hearing was conducted, and recite generally the conduct of such hearing and the decision and order made therein and pray for a new hearing and judgment by the court. The party appealing shall file at said time, with the complaint, a bond, with such surety or sureties as the clerk of such court may approve, conditioned to pay all costs if such appeal be decided adversely to the appellant, and he shall also cause a summons to be issued and served upon such state veterinarian, as in other civil actions. Either the attorney-general of the state, or the prosecuting attorney of said county, or both, upon notice from the defendant, shall appear for such state veterinarian and defend such appeal. A motion to dismiss said appeal may be filed by the defendant, if it be not perfected in time, but no further pleadings shall be required, and the allegations of such complaint shall be deemed denied. The appellant shall have the right to inspect and obtain copies of any of the proceedings, papers and records in the office of said state veterinarian or under his control, applicable to or affecting such hearing and appeal. Such appeal shall be placed on the advance calendar and heard as soon as possible, and if the court be in vacation, the same may be heard at any time by the judge thereof, or by any other judge designated and appointed by him, in the same manner and with the same effect as if all such proceedings were conducted in term. The court shall hear and conduct said appeal *de novo*, as a civil action, upon all the issues; and either party shall be entitled to offer all competent evidence relevant thereto, and the court

shall be governed in all other respects by the procedure and rules governing the trial of civil causes; except that such appeal shall be tried and decided solely by the court, and either party may have a change of judge, but there shall be no change of venue from the county. The court shall make a general finding and render judgment thereon and shall have the power to reverse, affirm, or modify, in whole or in part, the decision and order appealed from, and a certified copy of such judgment, when final, shall be filed with said state veterinarian, who shall enter the same of record and in all things comply therewith. Either party to such proceedings may appeal from the decision and judgment of such court to the Appellate Court of Indiana, as in other civil causes, and such appeal shall operate as a stay of such judgment until finally determined.

LICENSE—SUSPENSION—REVOCATION—ORDER — WHEN EFFECTIVE:

SEC. 17. (a) No decision of the state veterinarian suspending or revoking any license shall become effective until the expiration of the period of thirty days allowed for appealing from such decision; and in the event of any such appeal to the lower court, or thence to the Appellate Court by either party, such decision shall not become effective until any such appeals are finally determined, as aforesaid.

COMPLIANCE WITH ACT:

(b) Pending any proceeding to suspend or revoke any license, or any appeal from any decision therein, every person affected thereby shall continue to comply with this act, and such compliance may be enforced then and at all other times by any appropriate action in the name of the State of Indiana, which shall be filed and conducted by the attorney-general upon written request of the state veterinarian.

VIOLATION OF ACT—PENALTIES:

SEC. 18. The violation of any of the provisions of this act, or the rules and regulations made in pursuance thereof, is hereby made a misdemeanor and any person, upon conviction thereof, shall be punished by a fine of not less than

$25.00, nor more than $100.00, for the first offense; and by a fine of not less than $100.00, nor more than $500.00, for the second offense; and for any subsequent offense, in addition to the fine provided for a second offense, there may be added imprisonment in the county jail for not more than ninety days.

FEES—DISPOSITION—STATE VETERINARY DISPOSAL PLANT FUND—APPROPRIATION:

SEC. 19. All monies received by the state veterinarian under this act shall be reported by him to the auditor of state, at the end of each month or at such other time as may be prescribed by law, and at the same time he shall deposit the entire amount of such receipts with the treasurer of state for deposit in the state general fund, but all monies so received shall be paid into a special continuing account of such general fund to be known as "state veterinary disposal plant fund", and shall be available for the payment of all the necessary expenses in carrying out all the provisions of this act, which payment shall be made as now or hereafter provided by law: Provided, however, That at the close of each fiscal year any sum of money in said special account, in excess of five thousand dollars ($5000.00), shall revert to the general account of the state general fund. For the purpose of providing a fund to administer this act until sufficient monies are received from license fees, the sum of five thousand dollars ($5000.00), or so much thereof as may be necessary, is hereby appropriated to the aforesaid special account out of any monies in the state treasury not otherwise appropriated, to be available from the date that this act takes effect for a period ending June 30, 1939.

SEPARABILITY:

SEC. 20. Should any section, or any clause, sentence, provision, phrase, or word of any section of this act be declared invalid for any reason, or be repealed, the validity of any and all other portions and provisions of this act shall not be affected thereby; but it is hereby declared that each and all of such other portions and provisions would have been enacted if any or all of such invalid or repealed portions or provisions had not been contained herein, and

all such remaining portions and provisions shall be construed, if possible so to do, so as to uphold and effectuate the purpose and effect of this act in all matters covered thereby.

SPECIFIC AND GENERAL REPEAL:

SEC. 21. That each of the following acts, or parts of acts, and all acts amendatory thereof or supplemental thereto, be and each is hereby specifically repealed, to-wit: Acts of 1905, section 592½ of Chapter 169; Acts of 1913, Chapter 111; Acts of 1913, section 8 of Chapter 135; and Acts of 1935, Chapter 205; and generally all laws and parts of laws in conflict herewith are hereby repealed.

CONSTRUCTION OF ACT:

SEC. 22. This act, or any provision thereof, shall not be construed as being repealed by implication by any other act passed at the same time or subsequent to it at this session of the general assembly, but any repeal thereof shall require a specific reference to this act by its title and date of approval. Except as it may be so specifically repealed, this act shall control in all its provisions over any other act passed, as aforesaid, at this session, in the event of any conflict therein, if such provisions in any or all such acts cannot be reconciled so all may remain effective: Provided, however, That in the event any other act passed at any time should provide generally that license fees shall be payable for an annual period beginning either with the state fiscal year, or with any other date than the calendar year, then the respective months of such annual period corresponding in order to January and June, as designated in this act for such payments, shall be substituted for the latter said months as the times for payment of license fees and other charges hereunder, and the last day of the month ending any semi-annual period shall be used in computing such period.

EFFECTIVE DATE:

SEC. 23. This act shall be in full force and effect on and after April 1, 1937.